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Engineering Contractors, Inc. and ECI of Washington, LLC, Alter Egos and Plumbers Local No. 5, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO

Engineering Contractors, Inc. and ECI of Washington, LLC, Alter Egos and Steamfitters Local 602, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of The United States and Canada, AFL-CIO

Engineering Contractors, Inc. and ECI of Washington, LLC, Alter Egos and Sheet Metal Workers International Association, Local No. 100, AFL-CIO

Engineering Contractors, Inc. and ECI of Washington, LLC, Alter Egos and Asbestos Workers Local 24 Pension Fund, Asbestos Workers Local 24 Medical Fund, and Asbestos Workers Local 24 Apprenticeship Fund, Affiliated with International Association of Heat and Frost Insulators and Allied Workers Local 24, AFL-CIO. Cases 05-CA-036213, 05-CA-036214, 05-CA-036216, 05-CA-036306, and 05-CA-036225

June 23, 2016

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA
AND HIROZAWA

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the compliance specification.

On December 8, 2011, the National Labor Relations Board issued a Decision and Order¹ that, among other things, ordered the Respondent, Engineering Contractors, Inc. and ECI of Washington, LLC, Alter Egos, to make whole all bargaining unit employees for any loss of earnings and other benefits resulting from the Respondent's violations of Section 8(a)(1), (3), and (5) of the Act. It further ordered the Respondent to comply with the terms and conditions of its collective-bargaining agreements with Plumbers Local No. 5, Steamfitters Local 602, Sheet Metal Workers Local No. 100, and Asbestos Workers Local 24, and to make whole all fringe benefit funds as required by those agreements. On March 28,

2013, the United States Court of Appeals for the Fourth Circuit entered its judgment enforcing the Board's Order in full.²

A controversy having arisen over the amount of backpay due the discriminatees and the funds, on February 4, 2016, the Regional Director for Region 5 issued a compliance specification and notice of hearing alleging the amounts due under the Board's Order, and notifying the Respondent that it must file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent failed to file an answer.

By letter dated March 8, 2016, the Region advised the Respondent that no answer to the compliance specification had been received, and that unless an answer was received by March 18, 2016, a motion for default judgment would be filed. By letter dated March 22, 2016, the Region again informed the Respondent that no answer had been received and that unless an answer was received by March 28, 2016, a motion for default judgment would be filed. Nevertheless, the Respondent failed to file an answer.

On March 31, 2016, the General Counsel filed with the Board a Motion for Default Judgment, with exhibits attached. On April 4, 2016, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent again filed no response. The allegations in the motion and the compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Default Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that a respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) provides that if the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the motion for default judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the Gen-

¹ 357 NLRB 1553 (2011).

² No. 12-1410.

eral Counsel's Motion for Default Judgment.³ Accordingly, we conclude that the net backpay due the discriminatees and the funds is as stated in the compliance specification, and we will order the Respondent to pay those amounts,⁴ plus interest accrued to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondent, Engineering Contractors, Inc. and ECI of Washington, LLC, Alter Egos, Upper Marlboro, Maryland and Washington, District of Columbia, its officers, agents, successors, and assigns, shall make whole the named discriminatees and fringe benefit funds by paying them the amounts set forth below, plus interest accrued to the date of payment, as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as set forth in *Kentucky River Medical Center*, 356 NLRB 6 (2010), minus tax withholdings required by Federal and State laws.⁵

Plumbers Local 5 discriminatees:

Thomas Alston	283,249.34
Thomas Bistodeau	173,419.21
Donald Brown	296,970.71
Richard Emery	230,898.12
Francis Hill	102,356.79
Jeffrey Lehman	232,354.21
Jeremy Nicholas	279,980.22
Lovelle Proctor	176,634.48
Brandon Sewell	247,334.03
Tristan Swann	259,916.83
Total:	\$2,283,113.94

Steamfitters Local 602 discriminatees:

³ Member Miscimarra concurs with the entry of a default judgment in this case. However, because default judgment cases can give rise to questions regarding whether the proper address was used when serving the complaint and when serving a notice to show cause why a default judgment should not be granted, Member Miscimarra believes the Board should evaluate the development of standards that would foster greater uniformity and certainty in this area.

⁴ The compliance specification provides that the backpay period for all the discriminatees and funds begins on May 7, 2010, the date the Respondent discharged the employees and ceased bargaining with the Unions, and ends on August 31, 2014, the approximate date the Respondent ceased operations.

⁵ As set forth in the compliance specification, the Respondent shall pay the discriminatees the amounts set forth opposite their names below, less any additional interim earnings unknown at this time, and shall remit to the appropriate taxing authority the Respondent's share of FICA contributions.

Timothy Capps	59,155.83
Clinton Cupples	1,843.50
Phillip Fowler	72,680.10
David Hall, Sr.	67,510.74
David Hall, Jr.	25,377.68
Nicholas Hamilton	76,538.91
Gary Harper, Jr.	74,559.30
Thomas Kay	43,934.82
Total:	\$421,600.88

Sheet Metal Workers Local 100 discriminatees:

Arrington Baines	269,392.56
Gregory DeSibour	277,596.20
Florence Gjorka	177,459.23
Dwayne Lyons	176,089.08
Eric Martin	244,849.72
Scottie Moomau	142,753.97
Troy Naylor	274,634.72
John Prescott	277,596.20
Charles Seville	277,596.20
David Tabron	178,525.00
Corey Young	320,827.00
Frank Young	96,408.00
Victor Zelaya	137,776.11
Total:	\$2,851,503.99

Asbestos Workers Local 24 discriminatees:

Joe Burnette	200,727.44
Curtis Clark	150,289.52
Bobby Jones	106,069.54
Frank Keeler	180,908.96
Sandra Rice	191,643.97
Sean Sprouse	180,908.96
Total:	\$1,010,548.39

TOTAL AMOUNT BACKPAY DUE \$6,566,767.20

Plumbers Local 5 benefit funds:

Plumbers and Pipefitters Medical Fund	479,715.00
Plumbers and Pipefitters National Pension Fund	409,620.05
Plumbers and Gasfitters Local 5 Retirement Savings Fund	80,559.62

Plumbers and Pipefitters Apprenticeship Fund	82,836.44	Sheet Metal and Air Conditioning Industry	11,540.04
United Association International Training Fund	6,856.40	Total:	\$1,275,958.48
Total:	\$1,059,587.51	Asbestos Workers Local 24 benefit funds:	
Steamfitters Local 602 benefit funds:		Asbestos Workers Local 24 Medical Fund	262,013.78
Heating, Piping and Refrigeration Medical Fund	80,728.81	Asbestos Workers Local 24 Pension Fund	310,005.51
Heating, Piping and Refrigeration Pension Fund	98,902.24	Asbestos Workers Local 24 Apprentice Fund	8,398.15
Steamfitters Local 602 Retirement Savings Fund	32,352.92	National Joint Apprentice Fund	2,282.35
Heating, Piping and Refrigeration Training Fund	10,816.62	Total:	\$582,699.79
International Training Fund	1,214.20	TOTAL AMOUNT DUE BENEFIT FUNDS:	\$3,142,260.57
Total:	\$224,014.79	TOTAL AMOUNT DUE IN BACKPAY AND TO FUNDS:	\$9,709,027.77
Sheet Metal Workers Local 100 benefit funds:		Dated, Washington, D.C. June 23, 2016	
Health Benefit Fund	581,259.44	Mark Gaston Pearce,	Chairman
National Pension Fund for the Sheet Metal and Air Conditioning Industry	575,041.20	Philip A. Miscimarra,	Member
Sheet Metal Workers Local 100 401(k) Fund	48,083.50	Kent Y. Hirozawa,	Member
Sheet Metal Local 100 Apprentice and Journeyman Training Fund	60,034.30	(SEAL) NATIONAL LABOR RELATIONS BOARD	
International Training Institute for the			